

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6867 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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JERAMBHAI R PATEL

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 6867 of 1988  
MR ND GOHIL for Petitioner No. 1  
MS NANDINI JOSHI AGP for Respondent No. 1-3  
MR AJ PATEL for Respondent No. 4
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/12/2002

ORAL JUDGEMENT

#. The petitioner is an Ex-serviceman. He retired from

Indian Air Force in 1981. His pension was Rs.306/= p.m. He had little agricultural income but it was not exceeding more than Rs.500/= p.m. He made an application to the Deputy Collector, Navsari, respondent No.2 on 2.5.1983 requesting him to allot the land of village Khergam for cultivating the same so that he can maintain family. Deputy Collector by his order dated 22.3.1984 allotted the land to the petitioner on certain terms and conditions (Annexure-A).

#. Respondent No.4-Khergam Gram Panchayat challenged the said allotment order before the Collector, Valsad by filing appeal, which was dismissed on 22.3.1984 (Annexure-B). Aggrieved of this order, respondent No.4 Khergam Gram Panchayat preferred revision application before the Additional Chief Secretary (Revenue Department)(Appeal), Government Gujarat, Ahmedabad, which was allowed on 29.7.1988 and the impugned orders at Annexures A and B were set aside by the order at Annexure-C by the Additional Chief Secretary, which is under challenge in this petition.

#. From the bare perusal of impugned order at Annexure-C dated 29.7.1988 it is clear that on absolutely irrelevant grounds learned Additional Chief Secretary allowed revision filed by respondent No.4-Khergam Gram Panchayat. He was of the opinion that before allotting the land, no public notice was issued and if the land is required as gochar land, notice was must under Section 38 of the Land Revenue Code. Unfortunately, while passing impugned order on this ground, the learned Additional Chief Secretary has completely overlooked the fact that the land in question which was allotted to the petitioner was already handed over to the Fisheries Department. That time respondent No.4-Khergam Gram Panchayat did not object to the same. However, the said land was released by the Fisheries Department as it was not required by them. Once it was released by the Fisheries Department, then it vested with the State and thereafter respondent No.4 had no lien over the land. Under the circumstances, the learned Additional Chief Secretary was absolutely wrong in exercising his revisional jurisdiction on such ground that before allotment no advertisement was given.

#. It may be stated that this is a petition of 1988. Initially, notice was ordered to be issued on 13.10.1988 and order of status quo regarding possession of the land was passed. After service of notice, learned Single Judge of this court confirmed ad-interim relief while admitting petition on the ground that it would not be proper to disturb status quo as the petitioner is in

possession of the land since long. Though the petition was admitted way back on 17.11.1988 no counter to this petition is filed by the respondents.

#. In view of the above, when the averments made in the petition remained uncontroverted, then there is no option for this court but to allow the same. Accordingly, this petition is allowed. Impugned order at Annexure-C is hereby quashed and set aside. The net result is that Annexures A and B are restored accordingly. Rule made absolute with costs.

(B.J.Shethna, J.)

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